

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Puget Sound Educational TV Inc.)	File Number: EB-06-ST-111
)	
Licensee of Television Station KWDK)	NAL/Acct. No.: 200732980001
Tacoma, Washington)	FRN: 0008778623
Facility ID # 35419)	

FORFEITURE ORDER

Adopted: September 25, 2007**Released: September 27, 2007**

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of five thousand, six hundred dollars (\$5,600) to Puget Sound Educational TV, Inc. ("PSETV"), licensee of station KWDK, in Tacoma, Washington, for willfully and repeatedly violating Section 73.1125(a) of the Commission's Rules ("Rules").¹ On March 2, 2007, the Enforcement Bureau's Seattle Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$7,000 to PSETV for failing to maintain a local main studio in its community of license.² In this *Order*, we consider PSETV's arguments that there were extenuating circumstances outside of PSETV's control that resulted in the violation, and that the forfeiture amount should be reduced based on PSETV's good faith efforts to comply with the Rules, and its history of compliance.

II. BACKGROUND

2. On Friday, May 12, 2006, agents from the Enforcement Bureau's Seattle Office attempted to conduct a routine broadcast inspection at the KWDK main studio at 18014 72nd Avenue South, Kent, Washington, 98188. The agents discovered that the studio at that address was empty, dark, and unattended. An agent called the phone number listed in the Seattle Telephone Directory for KWDK and was connected to a voice mail box for the station that was full.

3. On Monday, July 17, 2006, the Seattle Office issued a Letter of Inquiry ("LOI") to PSETV at their address of record, 500 Westgrove Lane, Colleyville, TX 76034. The LOI was sent via regular and certified mail. Both copies of the LOI were returned to the Seattle Office as undeliverable.

4. On Wednesday, July 26, 2006, an agent from the Seattle Office telephoned the number listed for PSETV. The telephone was answered as "Daystar." The agent asked to speak with the President of PSETV. The agent spoke with a representative of PSETV and asked for the location of the main studio for KWDK. After some research, the representative provided the address as: 18000 Pacific Highway So., Suite 1007, Seattle, WA 98188, ("Pacific Highway Location").

¹ 47 C.F.R. § 73.1125(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732980001 (Enf. Bur., Western Region, Seattle Office, released March 2, 2007).

5. On Monday, August 21, 2006, at 12:30 p.m., Seattle agents attempted to inspect the KWDK main studio at the Pacific Highway Location and found the office locked, dark, and unattended. On Tuesday, August 22, 2006, at 11:40 a.m., a Seattle agent again attempted to inspect the KWDK main studio and found the office locked, dark, and unattended. The agent called the listed telephone number and got a recorded message that the voice mail box was full.

6. On Wednesday, August 23, 2006, at 9:30 a.m., a Seattle agent again attempted to inspect the KWDK main studio at the Pacific Highway Location and found the office locked, dark, and unattended. On Thursday, August 31, 2006, at 12:45 p.m., a Seattle agent again attempted to inspect the KWDK main studio and found the office locked, dark, and unattended.

7. On Tuesday, October 24, 2006, at 12:30 p.m. and at 2:35 p.m., Seattle agents attempted to inspect the KWDK main studio at the Pacific Highway Location and found the office locked, dark, and unattended. On Wednesday, November 8, 2006, at 2:55 p.m., Seattle agents again attempted to inspect the KWDK main studio and found the office locked, dark, and unattended.

8. On Wednesday, December 6, 2006, a Seattle agent telephoned the new number listed for PSETV. The telephone was answered as "Daystar." The Seattle agent identified himself and asked to speak with someone responsible for KWDK. Eventually, the agent spoke with the Regulatory Affairs Manager. The agent asked the Regulatory Affairs Manager if he was aware of the FCC requirement to maintain a main studio and if KWDK had an FCC waiver of the requirement to maintain a main studio. The Regulatory Affairs Manager replied that he was aware of the main studio requirement and that KWDK did not have a waiver of the rule requirement to maintain a main studio. The Regulatory Affairs Manager also stated that the "Master Control" Operator for KWDK had quit a few months ago and a replacement had just been hired starting on November 30, 2006.

9. On March 2, 2007, the Seattle Office issued a *NAL* in the amount of \$7,000 to PSETV, finding that PSETV apparently willfully and repeatedly failed to maintain a local main studio in its community of license. PSETV filed a response ("*Response*") on April 30, 2007, arguing that there were extenuating circumstances outside of PSETV's control that resulted in the violation, and that the forfeiture amount should be reduced based on PSETV's good faith efforts to comply with the Rules, and its history of compliance.

III. DISCUSSION

10. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").⁵ In examining PSETV's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶

11. Section 73.1125(a) of the Rules requires the licensee of a broadcast station to maintain a main studio in its community of license. The station's main studio must serve the needs and interests of the residents of the station's community of license. In particular, the main studio must be accessible to

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(E).

the public during normal business hours “[t]o assure meaningful public participation in [the Commission’s] licensing process.”⁷ To fulfill these functions, a station must, among other things, maintain a meaningful managerial and staff presence at its main studio.⁸ The Commission has defined a minimally acceptable “meaningful presence” as full-time managerial and full-time staff personnel.⁹ In addition, there must be “management and staff presence” on a full-time basis during normal business hours to be considered “meaningful.”¹⁰ Although management personnel need not be “chained to their desks” during normal business hours, they must “report to work at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a home base.”¹¹ The site held out by PSETV as the main studio location for KWDK had no public access, and no staff presence.

12. PSETV does not deny the facts described in the *NAL*. However, PSETV argues that “there were numerous extenuating circumstances, outside of the control of the licensee which resulted[ed] in the difficulties experienced by the Enforcement Bureau in conducting its routine investigation of Station KWDK.” PSETV states that it moved the KWDK main studio location from the Kent location to the Pacific Highway Location prior to May 12, 2006, which is why the Seattle agent found the main studio “empty, dark and unattended.”¹² PSETV states that if the agents had gone to the new studio, they would have discovered it staffed and fully functioning. However, PSETV also states that the KWDK chief operator resigned prior to the August 21, 2006 inspection which is why the agents found the main studio at the Pacific Highway location “locked, dark and unattended.” Finally, PSETV states that it has maintained a meaningful a managerial and staff presence at its main studio since shortly after the Seattle Office’s last attempted inspection on November 8, 2006. While we sympathize with PSETV’s difficulties, they are not a basis for a reduction of the forfeiture amount. Once Seattle agents discovered that the KWDK main studio had been moved to the Pacific Highway Location, they attempted to inspect the station six times, during regular business hours, between August 21, 2006 and November 8, 2006, a span of almost three months. The main studio was locked and unattended during each attempted inspection. Therefore, we decline to reduce the forfeiture amount based on PSETV’s extenuating circumstances.

13. We also decline to reduce the forfeiture amount based on PSETV’s assertion that it came into compliance with the Commission’s main studio staffing requirements shortly after the November 8, 2006, attempted inspection. We find that this is not a sufficient good faith effort to comply with the Rules to justify a reduction. Reductions based on good faith efforts to comply generally involve situations where violators demonstrated that they initiated measures to correct or remedy violations,¹³ or that they had established compliance programs in place,¹⁴ prior to the Commission’s involvement. In the present case, PSETV has only asserted that it finally ensured that KWDK was in compliance with Section 73.1125(a) of the Rules after the sixth attempted inspection by the Seattle Office.

⁷ *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3218 (1987), *clarified* 3 FCC Rcd 5024, 5026 (1988).

⁸ 2 FCC Rcd at 3217-18.

⁹ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified* 7 FCC Rcd 6800 (1992).

¹⁰ *Id.*

¹¹ 7 FCC Rcd at 6802.

¹² PSETV also states that the telephone number for KWDK was also changed at the time of the move and the old voicemail box for the previous number was full and not checked. PSETV also indicates that while it notified the Commission of its change of address on August 4, 2006, the actual change took place prior to the July 17, 2007, LOI, which resulted in the LOI being returned to the Commission.

¹³ *See Radio One Licenses, Inc.*, 17 FCC Rcd 20408 (EB 2002), *recon. denied*, 18 FCC Rcd 15964 (2003).

¹⁴ *See Tidewater Communications, Inc.*, 18 FCC Rcd 5524, 5525 (EB 2003).

14. PSETV also appears to argue that it has a history of compliance with the Commission's Rules. We have reviewed our records and we concur. Consequently, we reduce PSETV's forfeiture amount from \$7,000 to \$5,600.

15. Based on the information before us, having examined it according to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we find that reduction of the proposed forfeiture to \$5,600 is warranted.

IV. ORDERING CLAUSES

16. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Puget Sound Educational TV, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$5,600 for willfully and repeatedly violating Section 73.1125(a) of the Rules.¹⁵

17. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁶ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹⁷

18. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Puget Sound Educational TV, Inc., at its address of record, and Robert L. Olender, Esquire, Koerner and Olender, P.C., its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹⁵ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.1125(a).

¹⁶ 47 U.S.C. § 504(a).

¹⁷ See 47 C.F.R. § 1.1914.